

Remarks

The preceding amendments and following remarks are submitted in response to the Official Action of the Examiner mailed September 19, 2006. Claims 26-39 are pending in this Application. Claim 26 has been amended. Support for the amendments is found in the specification, claims, and drawings as originally filed. No new matter has been added. Reconsideration, examination and allowance of all pending claims are respectfully requested.

Rejections under 35 U.S.C. § 103(a)

All of the prior art rejections from the previous Office Action have been maintained. Applicants respectfully traverse all rejections.

Applicants submit that the permanent, underground shelter of Daroga cannot be seen to be a kit including a packaged set of objects, and more particularly, a packaged set of portable objects, as is claimed. Additionally, Trice does not supply what Daroga lacks because Trice is also directed to a permanent, underground shelter that is assembled on site in a hole. Thus, Trice cannot be deemed to teach a kit including a packaged set of portable objects, as is now claimed. Thus, the combination of Daroga and Trice fails to teach or suggest each and every element of the claims.

In response to Applicants' previous arguments regarding the claimed kit of packaged objects, the Examiner asserts that the specification supplies no teaching on packaging the components together to constitute a single unit, kit, or packaged set of objects. Applicants respectfully disagree. As shown on the attached printout from the Merriam-Webster online dictionary, the term "kit" is defined as "a packaged collection of related material". The specification teaches, for example at page 5, lines 16-17, "the present invention includes methods and kits for rapidly adapting a room in a building into a safe haven", and at page 6, lines 9-15, "In rapidly adapted rooms, the sealing can be accomplished using a kit which can include inflatable gas bladders as described in copending U.S. patent application Ser. No. 09/281,738, filed Mar. 3, 1999, entitled METHOD AND APPARATUS FOR SEALING BUILDING DUCTWORK DURING CHEMICAL OR BIOLOGICAL ATTACK, herein incorporated by reference. The use of

such a kit is illustrated in FIG. 2 having an inflated gas bladder 126 inserted well into duct 114 through vent 116." Emphasis added. The specification clearly describes a kit for adapting a room in a building, and because the well-known definition of "kit" is a packaged collection of related material, Applicants submit that the specification adequately describes and supports the claimed element of a kit comprising a packaged set of objects. Further, the Examiner has not provided any teachings or suggestions in the prior art of a packaged set of objects as is recited in the claims. Each and every element of the claims is thus not taught or suggested in the cited prior art.

In response to Applicants' previous arguments that one of ordinary skill in the art would not consider the shelters of Daroga and/or Trice to be portable, the Examiner asserts:

The collection of components as taught by the prior art combination of Daroga, et al in view of Trice have components capable of being moved from one location to another, since the prior art combination read on the applicants disclosed "kit", the fact that the components can be relocated, meet the portability limitation. Applicants arguments that the prior art constitute a bomb shelter does not diminish the fact that the structure is capable of being relocated along with its' components even if its not its intent

(Emphasis added; see page 11, lines 5-9 of Office Action mailed September 19, 2006).

Applicants submit that the Examiner's assertion regarding what would be considered "portable" is contrary to the definition understood by one of ordinary skill in the art. The Examiner appears to be asserting that any structure or object that is in any way capable of being moved or transported once, even if it is then intended to be permanently installed or fixed, meets the limitation of "portable". Applicants respectfully disagree. Such a definition of portable would appear to include a high-rise office building because the steel girders used to build the structure are transported to the site and assembled to create the building. Applicants submit that one of ordinary skill in the art would certainly not consider a high-rise office building as being "portable" just because the materials used in construction were initially transported to the site and then used to build the permanent structure. The Examiner's interpretation of "portable" is thus contrary to the definition known by one of ordinary skill in the art.

MPEP 2111 states that claims must be given their broadest reasonable interpretation:

...the "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification.").

The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

2111.01 Plain Meaning

II. <"PLAIN MEANING" REFERS TO THE >ORDINARY AND CUSTOMARY< MEANING GIVEN TO THE TERM BY THOSE OF ORDINARY SKILL IN THE ART

****>**Claim terms are presumed to have the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003)("In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art."). It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflects both the "ordinary" and the "customary" meaning of the terms in the claims. *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003).

(Emphasis added). Applicants submit that the Examiner's interpretation of "portable" is not the ordinary, customary, and plain meaning attributed to the word by those of ordinary skill in the art. Both Daroga and Trice appear to teach bomb shelters that are buried under ground, thus the components of the shelters would not be considered "portable" by one of ordinary skill in the art.

Regarding the motivation to make the air intake valve of Daroga portable, the Examiner asserts that the valve 52 of Daroga is capable of being moved from one location to another, and that the manner in which the structure is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the

claimed structural limitation. Applicants respectfully disagree. Independent claim 26 recites a portable sealing device for sealing the room from any coupled ventilation ducts. As stated above, the term "portable" must be given the ordinary and customary meaning attributed to it by those of ordinary skill in the art. Applicants submit that one of skill in the art would not consider the valve 52 or anti-blast valve 52A in the air intake of the shelter of Daroga as being a "portable" sealing device. Daroga teaches the valve 52 as being in the air intake 51 which appears to be permanently installed in the underground shelter. There is no indication or suggestion in Daroga that the valve 52 is portable. Thus the valve 52 of Daroga does not appear to meet the claimed element of a portable sealing device. Further, there is no motivation or suggestion in Daroga for modifying the valve 52 to be portable.

The Examiner appears to be arguing that the teachings of Daroga and Trice could be modified and that the structures taught in the references are capable of being modified to achieve the claimed structure. Applicants submit that the fact that a reference can be modified is not sufficient to establish obviousness. MPEP 2143.01 states:

III. FACT THAT REFERENCES CAN BE COMBINED OR
MODIFIED IS NOT SUFFICIENT TO ESTABLISH PRIMA FACIE
OBVIOUSNESS

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)... Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." 916 F.2d at 682, 16 USPQ2d at 1432.). See also *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992).

IV. FACT THAT THE CLAIMED INVENTION IS WITHIN THE
CAPABILITIES OF ONE OF ORDINARY SKILL IN THE ART IS NOT
SUFFICIENT BY ITSELF TO ESTABLISH PRIMA FACIE
OBVIOUSNESS

A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

(Emphasis added). The Examiner has not provided objective reasoning for why one of ordinary skill in the art would have been modified to modify the teachings of Daroga and/or Trice.

MPEP 2142 states:

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985)...

When the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the examiner to explain why the combination of the teachings is proper. *Ex parte Skinner*, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986).

The Examiner has asserted that the components of Daroga and/or Trice are capable of being moved from one location to another, but has not provided any suggestion of the desirability of doing so. Both references appear to teach permanently installed underground shelters, thus the references do not provide the necessary suggestion. Further, the Examiner has not provided any objective reasoning as to why one of ordinary skill in the art would have been motivated to modify the teachings of Daroga and/or Trice to achieve the claimed kit. The only motivation appears to be in Applicants' specification, which is clearly improper.

The Examiner also asserts that Applicants have claimed a room in combination with the kit, where a room is tied to the invention in a similar way in which the shelter of the prior art is used in the rejection of Daroga in view of Trice. Applicants do not understand this statement. The instant claims recite a packaged set of object for use in providing a breathable atmosphere in a room. While the portable sealing device is configured for sealing a room from any coupled ventilation ducts, the sealing device is still portable, and is thus quite different from the valve, door, or escape hatch of Daroga

which appear to be an integral, permanent part of the permanently installed, underground shelter.

Regarding the motivation for combining the Daroga and Trice references, the Examiner cites *In re Fine*, stating that obviousness is found when there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. However, the Examiner then appears to assert that the motivation for combining Daroga and Trice is based on the fact that they are related arts. Applicants submit that the mere fact that two references are in a related art does not satisfy the motivational requirements for obviousness. As stated above, MPEP 2143.01 states that the mere fact that references can be combined or that a modification is within the skill of the ordinary artisan is not sufficient motivation to establish a *prima facie* case of obviousness. The Examiner has not provided any reasoning as to why one of ordinary skill in the art would have been motivated to modify the teachings of Daroga and/or Trice to achieve the claimed kit.

In response to Applicants' previous arguments that the air-tight door and escape hatch of Daroga do not appear to seal the room from a ventilation duct, the Examiner asserts that the structures of Daroga will inherently seal the room from any coupled ventilation duct, if a ventilation duct were provided. The Examiner has not, however, provided any reasoning or support for such an assertion. The door and escape hatch of Daroga appear to be configured to seal the room from the outside environment. It would appear that if the shelter of Daroga were provided with multiple rooms and ventilation ducts for each room, the ducts would be either internal to the building or configured similarly to the air intake 51. In either configuration it is unclear how the door 16 and/or escape hatch 62 could possibly be considered to inherently seal the room from such a duct.

Regarding claim 35, the Examiner points to Connor for teaching specific sealing devices. Applicants note, however, that claim 35 is included in the rejection based only on Daroga in view of Trice.

In response to Applicants' previous argument that there is no motivation for putting the pressure-controlled valve of Connor in the shelter of Daroga and that the

valve of Connor does not appear to be portable, the Examiner asserts that while the valve of Connor is not intended to be, it is structurally capable of operating in a manner required by the instant claims. This appears to be a clear use of the instant specification as motivation for combining Daroga and Connor, which is improper. As stated above, the mere fact that a reference could be modified is not a proper basis for obviousness. The Examiner has provided no motivation, suggestion, or reasoning as to why one of ordinary skill in the art would have been motivated to modify the teachings of Daroga, Trice, and/or Connor to achieve the claimed kits. The only motivation appears to be either Applicants' own specification or the mere fact that the references are in a related art, neither of which are proper bases for obviousness.

Regarding claim 29, the Examiner asserts that the prior art only needs to indicate a structure capable of performing the applicants claimed invention, and that Mayland teaches means for collecting and venting gases from the chamber, thus to insert the means through an existing plumbing water trap is within the level of ordinary skill in the art. MPEP 2143.01 states, "The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999). The Examiner's reliance on the level of ordinary skill in the art is clearly an improper basis for obviousness.

In response to Applicants' previous argument that one of ordinary skill in the art would not be motivated to substitute the inflatable bladder of Pearman for the steel door of Rudinger, the Examiner contends that the level of protection is not what is at stake, but rather the intended use. It appears the Examiner may have misinterpreted Applicants' arguments. The arguments regarding the level of protection provided by the steel door of Rudinger as opposed to the inflatable bladder of Pearman are directed to the lack of motivation to combine the references. Applicants submit that one of ordinary skill in the art would have no motive to substitute the inflatable bladder of Pearman for the steel door of Rudinger because doing so would appear to destroy the usefulness of the Rudinger structure. The level of protection is in reference to Rudinger's teaching that the shelter, including the steel door, is designed to provide "some protection against the radioactivity and intense heat attendant the explosion of an atom bomb or a hydrogen bomb." See

Rudinger at column 1, lines 17-20. It would appear that substituting the inflatable bladder of Pearman for the steel door of Rudinger would not provide protection from the radioactivity and intense heat, as is the intended purpose of Rudinger. Thus, making such a modification would appear to destroy the Rudinger reference. The only motivation for making such a modification appears to be found in the instant specification, which is clearly improper.

Regarding Applicants' previous arguments that there is no motivation for combining the teachings of Long et al. in view of Michielson and Staub et al, the Examiner asserts that the teachings of Michielson and Staub can be substituted for the teachings of Long and that "the motivation is that these references are related art". As stated above, the mere fact that references can be modified is not sufficient support for a *prima facie* case of obviousness. Additionally, the level of skill in the art is not sufficient motivation. Further, Applicants submit that the mere fact that references are in a related art is not proper motivation for obviousness. As cited by the Examiner, *In re Fine* clearly states that proper motivation is found in either the references themselves or in the knowledge generally available to one of ordinary skill in the art. The Examiner has not asserted either source for motivation, but instead appears to be asserting that the mere fact that the references are in a related art provides the motivation for their combination. Applicants submit that this is not a proper basis for obviousness. The Examiner has not provided any reasoning as to why one of ordinary skill in the art would have been motivated to make the asserted modifications to the references.

Claim 38 states that the portable carbon dioxide scrubber is sized and configured to remove carbon dioxide directly from the room and the portable gaseous oxygen generator is sized and configured to provide a sufficient amount of oxygen directly to the room to meet the oxygen needs of two or more people residing in the room. None of Daroga, Trice, or Holmes appear to teach or suggest such a kit. The following arguments were provided in the previous response, but the Examiner has not addressed them. If this rejection is maintained, the Examiner is respectfully requested to provide specific comments regarding this rejection. Holmes appears to teach a tube through which a single person breathes to obtain fresh air. The tube of Holmes does not appear to be

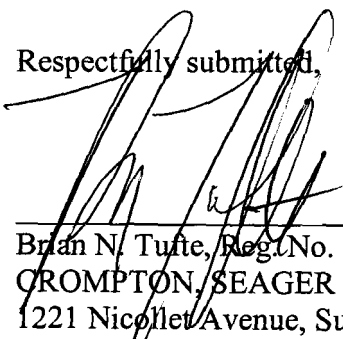
Application Serial No. 09/818,383
Amendment dated December 15, 2006
Reply to Office Action dated September 19, 2006

configured and sized to provide oxygen directly to the room to meet the oxygen needs of two or more people in the room. Thus, even if one were to combine the teachings of Daroga, Trice, and Holmes, one would not arrive at the claimed invention. Withdrawal of the rejection is respectfully requested.

In view of the foregoing, all of pending claims 26-38 are believed to be in condition for allowance. Reexamination and reconsideration are respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 359-9348.

Respectfully submitted,

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